



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

West Central Regional Office
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Robert G. Burnley
Director
Steven A. Dietrich
Regional Director

COMMONWEALTH OF VIRGINIA WASTE MANAGEMENT BOARD CONSENT ORDER ISSUED TO The City of Roanoke, Virginia

Section A: Purpose

This is a consent order issued under the authority of §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 of the Code of Virginia (1950), as amended, between the Virginia Waste Management Board and The City of Roanoke, Virginia to resolve certain alleged violations of environmental laws and/or regulations.

Section B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a consent order.
6. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC

20-60-12 *et seq.* ("HWMR") or the Solid Waste Management Regulations, 9 VAC 20-80-10- *et seq.* ("SWMR"). The specific provisions of Title 40 of the Code of Federal Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-268, and 9 VAC 20-60-270.

6. "The City" means The City of Roanoke, Virginia.
7. "Non-Hazardous" means not subject to regulation as a hazardous waste pursuant to 40 CFR Part 261.

Section C: Findings of Fact and Conclusions of Law

1. The City of Roanoke owns and operates a Public Works Service Center ("PWSC") at 1802 Courtland Road in Roanoke, Virginia. The EPA ID Number of the PWSC is VAD123725350.
2. During the period from about the late 1970's to 1991, solid and allegedly hazardous waste was disposed of at the PWSC. Some waste was placed on the surface of the ground and some waste was buried. This waste included crushed and empty drums, drums containing oil-based paint waste, drums containing black asphalt-like substances, and drums containing characteristically ignitable hazardous waste.
3. On March 21, 2000, the Board issued a Consent Order ("2000 Order") to the City regarding hazardous waste management at the PWSC in Roanoke, Virginia. The 2000 Order required closure of the areas where hazardous waste as described in Paragraph 2 above was found at the PWSC. These areas were designated as Hazardous Waste Management Units 1 and 2. On August 2, 2002, the Department certified completion of clean closure of those units in accordance with the requirements of the Regulations and the 2000 Order.
4. The City commenced construction of a new stadium and amphitheater complex on City property near the PWSC in mid-2003. The areas that were clean closed under the 2000 Order are within the boundaries of the complex.
5. On August 25, 2003, two crushed 55-gallon drums containing dried yellow road marking paint and three empty crushed drums were excavated during construction activities about 15 feet southwest of Unit 1. These materials were properly reported to DEQ, tested, found to be non-hazardous, and were disposed of properly. There was no soil staining, odor, or any other evidence of a release from any of these drums.

6. On September 9, 2003, a partially crushed 55-gallon drum containing Non-Hazardous petroleum products was excavated during construction activities about 100 yards from the southern boundary of the area encompassed by the closure required by the 2000 Order. This was properly reported to DEQ. Some petroleum odor and staining was observed in soils adjacent to the drum. That drum, its contents, and approximately 60 tons of soil, some of which was petroleum contaminated soil, were removed for disposal and disposed of properly. Following removal of the approximately 60 tons of soil, there was no staining, odor, or any other evidence of a release in the soils that remained in place at this site.
7. On October 7, 2003, one 30-gallon drum containing paint and four 5-gallon pails containing paint were excavated during construction activities beyond the northern boundary of the area encompassed by the closure required by the 2000 Order. These were properly reported to DEQ. There was no soil staining, odor, or any other evidence of a release from any of these containers. Sampling and analysis indicated that the paint in each container was a hazardous waste as defined at 40 CFR § 261.20(a) and 40 CFR § 261.21. These containers and their contents were manifested, transported off site, and properly disposed of at a permitted hazardous waste management facility.
8. On December 30, 2003, one partially crushed 55-gallon drum containing absorbent material was excavated beneath the former School Board Bus Maintenance area near the northeastern boundary of the stadium construction site. This was properly reported to DEQ. Some petroleum odor and staining was observed in soils adjacent to the drum. That drum, its contents, and approximately 7 tons of petroleum-contaminated soil were removed for disposal and disposed of properly. Subsequent confirmatory sampling to Total Petroleum Hydrocarbons indicated that all petroleum contaminated soil was removed from the site.
9. In 1975, construction of a 54-inch storm sewer line disturbed areas at or near the waste disposal sites described in Paragraphs 5 through 8 above. A report dated October 31, 2003 from the City's environmental management consultants to the City's Environmental Administrator stated that "Given the decayed state of the containers and the location and depth of the burial, the disposal of these containers most likely occurred at the time of the construction of the storm sewer line (i.e., in the mid to late 1970s)." Accordingly, 1975 is the most probable date for burial of the waste described in Paragraphs 5 through 8 above.
10. Neither the Director of the Department, his predecessor-in-interest, nor the Board has ever issued a permit under the HWMR or the SWMR for operation of the PWSC as a waste treatment, storage, or disposal facility.

11. The Virginia Department of Health promulgated the Regulations Governing Disposal of Solid Waste on April 1, 1971. Part I, Article 3, Section A of those regulations prohibits the burial of solid waste without a permit. Part IV, Article 2, Section H prohibits the disposal of hazardous waste in sanitary landfills. Disposal of solid waste without a permit is prohibited at 9 VAC 20-80-90.A and Code § 10.1-1408.1.A.
12. 9 VAC 20-80-200 states that

Any solid waste management facility receiving or having received waste without a permit, in violation of statutory requirements or these or predecessor regulations, shall be classified as an unpermitted facility. . . . B. The owner, operator, or any other party responsible for an unpermitted facility shall immediately cease treatment, storage or disposal of any additional waste and shall initiate removal and cleanup as provided for in 9 VAC 20-80-210.A
13. Accordingly, the Department alleges that disposal of solid waste at the PWSC without a permit as described in Paragraphs 5 through 8 above violated Part I, Article 3, Section A and Part IV, Article 2, Section H of the Regulations of the Virginia Department of Health Governing Disposal of Solid Waste (Effective April 1, 1971), 9 VAC 20-80-90.A, and Code § 10.1-1408.1.A.
14. The Department alleges that because the PWSC received solid waste without a permit in violation of the Regulations of the Virginia Department of Health Governing Disposal of Solid Waste, the PWSC is classified as an unpermitted facility in accordance with 9 VAC 20-80-200. Under 9 VAC 20-80-210.A, solid waste at an unpermitted facility may be removed for proper disposal in accordance with the applicable regulations. Solid waste and contaminated soils discovered at the PWSC, as described in Paragraphs 5 through 8 above, have already been removed for disposal and disposed of properly.
15. On December 11, 2003, DEQ issued a Notice of Violation alleging the violations described in Paragraph 13 above.
16. The criteria at 9 VAC 20-80-210.A.1 for evaluation of removal as remedial action are considered as follows as based upon the findings at Paragraphs 5, 6, 7 and 8 above: there is no evidence of any remaining waste or waste constituents at the site there is no evidence of any actual or potential human exposure, actual or potential contamination of drinking water supplies or sensitive ecosystems; there is no evidence of the presence of

any solid waste or hazardous constituents of solid wastes in containers there is no evidence of hazardous constituents of solid waste in soils; and there is no threat of fire or explosion, or other situations or factors which may pose threats to public health or welfare or the environment. Given the fact that all waste is already removed, a cost comparison with closure in place is not applicable.

17. Accordingly, removal under 9 VAC 20-80-210.A is the most appropriate remedial action. Because removal has already been completed, no further remediation or closure activities at the PWSC are required at this time for the wastes described at Paragraphs 5 through 8 above.

Section D: Agreement and Order

Accordingly, the Board, by virtue of the authority of Code § 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 orders and the City agrees that the civil charge in settlement of the violations alleged herein is Three Thousand Dollars (\$3,000.00). The City shall pay this civil charge within thirty (30) days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

Either on a transmittal letter or as a notation on the check, the City shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

Section E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the City, for good cause shown by the City, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those alleged violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not

arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order, the City admits the jurisdictional allegations in this Order, but does not admit the factual allegations or legal conclusions contained herein. The Department and the City agree that the actions undertaken by the City in accordance with this consent order do not constitute an admission of any liability by the City. The City does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Statement of Facts or Determinations contained in Section C, of this Order.
4. For purposes of this Order only, the City declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, Code §§ 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
5. Failure by the City to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The City shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, or other act of God, war, strike, or other such occurrences beyond the City's reasonable control. The City must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. The City shall notify the Director and the Director of the Department's West Central Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date substantial compliance will be achieved.
 - e. Failure to so notify the Director and the Director of the Department's West Central Regional Office within 48 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of inability to comply with a requirement of this Order.
8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director of the Department of Environmental Quality or his designee and the City. Notwithstanding the foregoing, the City agrees to be bound by any compliance date that precedes the effective date of this Order.
10. This Order shall terminate upon receipt by DEQ of the funds specified in Section D herein.
11. By the signature of an authorized municipal official below, the City voluntarily agrees to the issuance of this Order.

for Steven A. Dietrich
Robert G. Burnley, Director
Department of Environmental Quality

7-2-04
Date

Seen and Agreed to:

Darlene L. Burcham
City Manager, City of Roanoke

The foregoing instrument was acknowledged before me on May 4, 2004,
by Darlene L. Burcham, City Manager of the City of Roanoke, in the County/City

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of Roanoke, Commonwealth of Virginia.

Sharon Mougis
Notary Public

My Commission expires: March 31, 2007

Approved as to Form
Dwight E. Legenkamp
Assistant City Attorney

Appropriation and Funds Required for
this Order Certified:

Jerome A. Hall
Director of Finance
Account #: 008-530-9758-9055
Date: 5/4/04